IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2700 OF 2005

Sanjay @ Sudam Bhimji Kokate ... Applicant

versus

The State of Maharashtra ... Respondent

...

Mr.Ganesh Gole, for the Applicant.

Mr.V.B. Konde Deshmukh, A.P.P., for the Respondent

...

CORAM : A.M.KHANWILKAR,J.

5th May 2005

P.C.:

. Heard Counsel for the parties. Perused the record. Indeed, the offence in question is a serious offence. Besides, the complaint as registered does indicate complicity of the Applicant in the commission of the offence. However, prima facie, I find substance in the argument of the Applicant that he has been

falsely implicated in the present offence. This has happened only after the Applicant started demanding the amount which he had advanced to the father of the deceased as hand loan for construction of his residential house. The amount was advanced was Rs.1,10,000/- withdrawn by the Applicant from the retiral benefits received after the death of the Applicant's father. In the light of the stand taken by the Applicant, the learned A.P.P. was called upon to assist the Court whether the investigating officer has examined and investigated into the stand taken by the Applicant. The investigating officer through the learned A.P.P. fairly accepted that no such inquiry was made. Matter was adjourned. After adjournment, statement of the complainant is recorded, which makes an attempt to give break up of the amount collected by the complainant from different sources for constructing his residential house. Even if all the figures referred to therein were accepted as it is, still there appears to be substance in the argument of the Applicant that the same does not tally with the total cost incurred by the complainant for construction of his residential

house. If it is so, it is possible that the Applicant is being falsely implicated merely because he had demanded repayment of the amount of Rs.1,00,000/- which was made over by him to the complainant as hand loan. The affidavit of one Nandkumar Kisan Titkare, who happens to be the uncle of deceased, has been placed on record, which clearly supports the stand of the Applicant that he had given hand loan to the complainant of about Rs.1,10,000/- and he himself had advanced Rs.90,000/- to the complainant. As mentioned earlier, indeed, there is evidence to indicate complicity of the Applicant in the commission of the offence, but if the stand of the Applicant is to be accepted, then the said record will have to be termed as doubtful and only created with purpose. Besides, the complaint has been filed after about one month from the date of incident. The Applicant is a Government servant. Taking overall view of the matter, the application ought to succeed but on the following conditions.

(A) The Applicant is granted anticipatory bail in connection with CR.No.I-66/2005 registered with Kolsewadi Police Station

on executing personal bond in the sum of Rs.25,000/- (Rupees Twenty five thousand only) with two local sureties in the like amount.

(B) The Applicant shall not influence prosecution witnesses or tamper with the prosecution evidence in any manner whatsoever.

(C) The Applicant shall co-operate for the purpose of investigation as and when called upon by the concerned Police Station in relation to the abovenumbered CR.

(D) The Applicant shall not enter District Pune except for the purpose of appearing before the investigating officer in connection with the investigation of the offence.

(E) This order shall enure in favour of the Applicant till the filing of the charge sheet.

(A.M.KHANWILKAR,J.)